

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 798

Case No. 94-19

(Map Amendment @ 5th, 6th, K and L Streets, N.W.
and New York Avenue, N.W. - Steuart Investment Co.)

February 12, 1996

Pursuant to notice, a public hearing was held by the Zoning Commission for the District of Columbia on April 20, 1995. At that hearing session, the Zoning Commission considered an application from the Steuart Investment Company to amend the Zoning Map of the District of Columbia, pursuant to Section 102 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The application, which was filed on November 17, 1994, requested a change of zoning from DD/C-2-C to C-3-C for Lots 8, 803 and 804 in Square 483.
2. The applicant seeks the change of zoning to allow for the construction of an office building or other development which would be constructed as a matter of right under the proposed C-3-C zoning.
3. The property included in the subject application comprises the entire square bounded by New York Avenue and 5th, 6th, K and L Streets, N.W. (Square 483, lots 8, 803 and 804). The property contains 56,339 square feet of land area and is currently unimproved. At the time the application was filed, the property was improved with a seven-story, vacant commercial building in approximately the center of the square.
4. The C-2-C District permits matter of right community business centers, including office, retail, housing and mixed uses to a maximum height of 90 feet and a maximum floor area ratio (FAR) of 6.0, of which no more than 2.0 may be used for other than residential purposes.
5. The Downtown Development (DD) District is an overlay District that is mapped in combination with other zone districts. The DD District is intended to facilitate land use and development policies for shopping, arts-related uses, Chinatown, historic

preservation and residential and mixed uses in the Downtown area.

6. The C-3-C District permits matter of right major business and employment centers of medium-high density development, including office, retail, housing and mixed uses, to a maximum height of 90 feet, a maximum FAR of 6.5 for all permitted uses and a maximum lot occupancy of 100 percent.
7. The subject property is located in the Mount Vernon Square area, one block east of the Square itself. The area in which the subject property is located contains a broad mix of uses and building types and is one which has not seen significant new development in recent years.
8. The subject site was zoned C-3-B as a result of the comprehensive rezoning undertaken in 1958. At that time, the C-3-B District permitted an FAR for office use of 6.5 with a 90-foot height. That C-3-B District is now designated C-3-C.
9. The site was rezoned as part of the broader rezoning of the Mount Vernon Square area which was accomplished in 1972. The site was split, such that the area within 160 feet of K Street was zoned C-2-C and the remainder of the site was zoned R-5-D. The southern portion of the site was later zoned Hotel Residential Incentive HR/C-2-C. The HR/C-2-C permitted development incentives for residential and hotel uses only, to a maximum FAR of 8.5 and a maximum height of 130 on the subject site. The HR Overlay did not reduce or affect the underlying commercial density. Any residential development which has occurred was done through the urban renewal process.
10. The Generalized Land Use Map adopted as part of the Comprehensive Plan includes the subject site in the high density commercial land use category. The Council specifically amended the Map in the Comprehensive Plan Amendments Act of 1994 to include Square 483 in that category. Section 1107(a)(4) establishes that the high density commercial land use category "includes a mix of employment, retail, office, cultural and entertainment centers which serve as the business and retail heart of the district and the metropolitan area."
11. At the same time that the Land Use Map amendment was adopted, the Council also amended the text of the Ward 2 Plan to include as an action in support of the residential land use objectives that the District Government should "Develop a major new residential community in the Mount Vernon Square North area (North of Massachusetts Avenue, N.W.), with commercial buildings on sites designated for high density commercial on the Generalized Land Use Map." The map and text

of the Comprehensive Plan were both amended in a manner which supports rezoning of this site by the Zoning Commission to implement the Comprehensive Plan.

12. The subject site is within one block of the Central Employment Area, is within a development opportunity area, is a site identified by the Council of the District of Columbia as appropriate for high-density commercial development and does not result in any residential displacement or adverse impacts on residential uses.
13. The applicant indicated that the proposed rezoning to C-4 is consistent with the Ward 2 plan, including the Economic Development and Land Use sections of the plan. He further stated that it is consistent with other elements of the Comprehensive Plan, including the Economic Development Element, the Transportation Element and the Urban Design Element.
14. The applicant stated that the proposed rezoning would further the health, safety and general welfare of the District of Columbia. The height and bulk of permitted development under the proposed C-3-C zoning would be less than the permitted height and bulk under the DD/C-2-C zoning. The uses permitted are the same; only the mix of uses is different. He also indicated that full development of the subject site under C-4 zoning would yield approximately \$2.2-\$2.6 million annually to the city, which is substantially more than the present taxes generated by the site.
15. The applicant's economic/real estate appraiser and transportation planner testified that the rezoning to C-3-C creates no adverse consequences in the area or to the city as a whole. Because the permitted bulk on the property is reduced, there would be no greater congestion as a result of rezoning to C-3-C. The change in use for a portion of the zoning envelop does not cause any adverse impacts.
16. The Office of Planning (OP), by memorandum dated April 7, 1995, recommended that the property be rezoned to C-3-C. The OP reported that the Comprehensive Plan Amendments Act of 1994 designated the site for high density commercial use and eliminated the high density residential component of what was previously a mixed use designation. The OP noted that while the Comprehensive Plan amendment was very clear, it essentially picked out one square for the change. The OP noted that the Ward 2 Plan encourages a residential "Neighborhood Ring" around the periphery of Downtown and that the Mount Vernon Square area is designated as a housing opportunity area. The OP expressed concern about the impact of an all-

commercial building on future residential development which would occur on urban renewal Parcel 1, located across 5th Street. The OP concluded, after evaluating and balancing all the planning policies relating to this case, that it supported the proposed rezoning.

17. The D.C. Fire Department, by memorandum dated April 7, 1995, to the Office of Planning, had no objection to the proposed rezoning. However, they indicated that fire and life safety features which are required by City codes such as fire alarms, sprinkler systems, standpipes, exits, fire related separations fire extinguishers, etc., shall be determined during the plans review process as part of the building permit application review.
18. The Metropolitan Police Department (MPD), by letter received by the Office of Planning on April 17, 1995, stated its opinion that the proposed rezoning would not adversely impact upon the District's Comprehensive Plan nor generate an undue increase in the level of police services currently being provided. The MPD did not oppose the request.
19. The Department of Public Works (DPW), by memorandum dated April 12, 1995, reported that, if the site were developed under the proposed zoning, all critical intersections in the vicinity of the site would operate at acceptable levels of service during the morning and evening peak hours. The DPW concluded that the proposed rezoning would have no adverse traffic impacts on traffic operating conditions in the area. The DPW supported the rezoning.
20. Advisory Neighborhood Commission 2C, by letter dated December 13, 1994, reported that the ANC supported the subject application. The ANC noted that rezoning to C-3-C would implement the Comprehensive Plan.
21. The Mount Vernon Square Neighborhood Association, by letter dated January 6, 1995, and by testimony at the hearing, supported the application. The Association was of the view that residential use was not appropriate for and would not be constructed on this site. The Association reported that it had supported the amendment to the Comprehensive Plan Generalized Land Use Map, to encourage demolition of the previous building and its replacement, in the interim with a parking lot and in the long term with an office building. The Association favored enhancing a strong residential community north of New York Avenue and allowing commercial development to occur on the subject site and others south of New York Avenue.

22. Councilmember Jack Evans, the Councilmember representing Ward 2, within which the subject property is located, by letters dated January 9, 1995, and April 19, 1995, supported the proposed rezoning of the subject property to C-3-C. Councilmember Evans indicated that the Council's 1994 amendments to the Comprehensive Plan indicate that this site is not an appropriate location for residential use, that retaining a mixed-use plan and zoning classification would not allow for redevelopment of the site and that action is desirable to encourage the owner to replace the previous industrial-looking building with a modern structure and use that would be more compatible with the current improving image of the neighborhood. Councilmember Evans noted that the Ward 2 Plan, which was amended at the same time as the Land Use Map was amended for Square 483, specifically provides for a residential community with "commercial buildings on sites designated for high density commercial on the Generalized Land Use Map." Councilmember Evans stated that the Comprehensive Plan, not just the Land Use Map, supports high density commercial for this site and that C-3-C zoning is appropriate to allow that to happen.
23. There was no opposition to the application.
24. On June 12, 1995 at its regular monthly meeting, the Zoning Commission discussed the case as a proposed action item. At that time, the Commission decided to draft a letter to the Council of the District of Columbia outlining the problem associated with the Comprehensive Plan designation for this specific site, the apparent conflict with other planning objectives for the area, and the effects on the surrounding area when specific sites are designated individually without planning studies or guides for the entire area. The Commission determined all parties in the instant case would be allowed to comment on any response received from the D.C. Council.
25. By letter dated October 3, 1995, City Council Chairman David A. Clarke, responded to the Zoning Commission's request. It may be summarized as follows:

"It is my view that the Commission must follow the Comprehensive Plan as adopted and that there is no basis for the Commission to request, in effect, that the Council justify its actions. All administrative agencies, whether or not they are independent, are subject to the duly enacted laws of the Council. The Comprehensive Plan Amendments Act of 1994 is, without question, final and effective law, and the Comprehensive Plan provisions contained

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within that law must be implemented by the Zoning Commission pursuant to the Home Rule Act.

It is my understanding that the record before the Zoning Commission contains sufficient information for the Commission to determine whether a C-3-C zoning designation for Square 483 is not inconsistent with the Comprehensive Plan, and I would suggest that the Commission act within that record."

26. By letter dated October 12, 1995, the applicant responded to Chairman Clarke's letter. It can be summarized as follows:

"The Commission must decide this case based on the exclusive record before it. See D.C. Code Ann. Subsection 1-1509(c) (1992). The applicant restates its position that it has presented sufficient evidence and testimony to warrant granting of the application. There is no evidence or testimony in the record to the contrary. The application meets all of the standards of the applicable laws which govern the actions of the Commission. There is no basis in the record for the Commission to ignore "the statutory imperatives" that give precedence to the Council in establishing planning policy. The record before the Commission supports no other conclusion than that DD/C-2-C zoning is inconsistent with the Comprehensive Plan and the high density commercial land use designation while the C-3-C zoning is consistent with the Plan and that designation.

The applicant therefore respectfully requests that the Commission grant the application at its meeting scheduled to be held on October 16, 1995."

27. By letter dated October 10, 1995, ANC-2C response to Chairman Clarke's letter indicated the following:

"While we appreciate the independence that the Zoning Commission has had over the years, the Comprehensive Plan, as a matter of law, requires that zoning be not inconsistent with the Comprehensive Plan. The implementation of the Plan through the processes of the Mayor, the ANC, the Ward Councilmember and the

Council as a whole, leading ultimately to the Zoning Commission, is a process which we take very seriously. We are concerned when one body takes it upon itself to second-guess the reasoned decision of the other groups involved and determines that it will not implement the Comprehensive Plan, despite the clear statements within the Land Use element of the Plan, which is to be given priority in evaluating the various elements of the Comprehensive Plan.

We hope that this response will be helpful to the Commission in recognizing the appropriateness of moving forward expeditiously to rezone the Square 483 property consistent with the Comprehensive Plan and the desires of the community."

28. With respect to the issues raised by the Office of Planning, the Commission finds as follows:
 - A. The Council clearly designated the subject square for high density commercial use. The present DD/C-2-C zoning is more suitable for mixed-use classifications and is not consistent with the high density commercial classification. The proposed C-3-C zoning is completely consistent with the high density commercial category.
 - B. The subject site would not be an island of C-3-C zoning. The square immediately to the southwest is now zoned C-3-C.
 - C. Development under the proposed C-3-C zoning would contrast with other potential and desired development in the area, but the Land Use Map specifically distinguishes the subject square and treats it differently from other properties around it.
29. The Zoning Commission concurs with OP, MPD, DPW, ANC-2C, the Mt. Vernon Square Neighborhood Associations and others and believes that the requested zoning of the subject property to C-3-C is appropriate.
30. The proposed decision of the Zoning Commission was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC, by report dated February 1, 1996, found that the proposed map amendment would not adversely affect the Federal Establishment or other

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Federal Interest in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. Rezoning to C-3-C is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
2. Rezoning to C-3-C will promote orderly development in conformity with the entirety of the District of Columbia zone plan as stated in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning to C-3-C is not inconsistent with the Comprehensive Plan for the National Capital.
4. Rezoning to C-3-C will not have an adverse impact on the surrounding neighborhood.
5. Under the Administrative Procedure Act and the requirement that a decision be supported by substantial evidence of record, there is no evidence or testimony in the record to support any decision other than approval of the application.
6. The Zoning Commission has accorded to Advisory Neighborhood Commission 2C the "great weight" to which it is entitled.
7. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicant is required to comply fully with the provisions of D.C. Code, Title I, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. The failure or refusal of the Applicant to comply with any provisions of D.C. Law 2-38 as amended, shall be a proper basis for the revocation of this order.

DECISION

In consideration of the findings of fact and conclusions of law set forth in this order, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of a change of zoning from DD/C-2-C to C-3-C for Lots 8, 803 and 804 in Square 483.

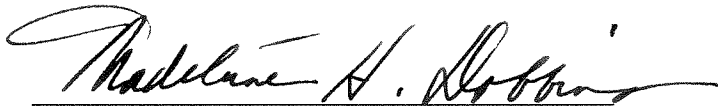
Vote of the Commission taken at the public meeting on October 23, 1995: 4-0: (John G. Parsons, Maybelle Taylor Bennett, Jerrily R. Kress, and William L. Ensign, to approve the map amendment from DD/C-2-C to C-3-C.

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This order was adopted by the Zoning Commission at its public meeting, on February 12, 1996, by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign, Jerrily R. Kress and John G. Parsons, to adopt as corrected).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAR 22 1996.


JERRILY R. KRESS
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

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